

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maura Roche	Team: APU	CCRB Case #: 201803363	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/24/2018 9:25 PM	Location of Incident: Inside of § 87(2)(b)	Precinct: 23	18 Mo. SOL 10/24/2019	EO SOL 10/24/2019	
Date/Time CV Reported Mon, 04/30/2018 3:39 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 04/30/2018 3:39 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Raymond Curbelo	29235	945636	GANG MN
2. DT3 Christophe Cruz	2652	932502	GANG MN
3. POM Jose Genao	10256	948031	GANG MN

Officer(s)	Allegation	Investigator Recommendation
A.POM Raymond Curbelo	Abuse: Police Officer Raymond Curbelo stopped § 87(2)(b)	§ 87(2)(b)
B.DT3 Christophe Cruz	Abuse: Detective Christopher Cruz stopped § 87(2)(b)	§ 87(2)(b)
C.POM Jose Genao	Abuse: Police Officer Jose Genao stopped § 87(2)(b)	§ 87(2)(b)
D.POM Raymond Curbelo	Abuse: Police Officer Raymond Curbelo stopped § 87(2)(b)	§ 87(2)(b)
E.DT3 Christophe Cruz	Abuse: Detective Christopher Cruz stopped § 87(2)(b)	§ 87(2)(b)
F.POM Jose Genao	Abuse: Police Officer Jose Genao stopped § 87(2)(b)	§ 87(2)(b)
G.POM Raymond Curbelo	Abuse: Police Officer Raymond Curbelo stopped § 87(2)(b)	§ 87(2)(b)
H.DT3 Christophe Cruz	Abuse: Detective Christopher Cruz stopped § 87(2)(b)	§ 87(2)(b)
I.POM Jose Genao	Abuse: Police Officer Jose Genao stopped § 87(2)(b)	§ 87(2)(b)
J.DT3 Christophe Cruz	Abuse: Detective Christopher Cruz frisked § 87(2)(b)	§ 87(2)(b)
K.DT3 Christophe Cruz	Abuse: Detective Christopher Cruz searched § 87(2)(b)	§ 87(2)(b)
L.POM Raymond Curbelo	Abuse: Police Officer Raymond Curbelo frisked § 87(2)(b)	§ 87(2)(b)
M.POM Raymond Curbelo	Abuse: Police Officer Raymond Curbelo searched § 87(2)(b)	§ 87(2)(b)
N.POM Jose Genao	Abuse: Police Officer Jose Genao frisked § 87(2)(b)	§ 87(2)(b)
O.POM Jose Genao	Abuse: Police Officer Jose Genao searched § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
P.POM Jose Genao	Abuse: Police Officer Jose Genao seized § 87(2)(b) s property.	

Case Summary

On April 30, 2018, § 87(2)(b) filed this complaint on behalf of himself and his friends, § 87(2)(b) and § 87(2)(b) at the CCRB in-person.

On April 24, 2018, at approximately 11:25 p.m., in the lobby of § 87(2)(b) in Manhattan, PO Raymond Curbelo, Det. Christopher Cruz, and PO Jose Genao, all of the Manhattan North Gang Squad, stopped § 87(2)(b) (Allegations A, B, C, D, E and F: Abuse of Authority – Stop, § 87(2)(g)), and § 87(2)(b) (Allegations G, H, and I: Abuse of Authority – Stop, § 87(2)(g)). Det. Cruz allegedly frisked § 87(2)(b) (Allegation J: Abuse of Authority – Frisk, § 87(2)(g)) and then allegedly searched § 87(2)(b) (Allegation K: Abuse of Authority: Search (of person), § 87(2)(g)). PO Curbelo allegedly frisked § 87(2)(b) (Allegation L: Abuse of Authority – Frisk, § 87(2)(g)), and then allegedly searched § 87(2)(b) (Allegation M: Abuse of Authority – Search (of person), § 87(2)(g)). PO Genao frisked § 87(2)(b) (Allegation N: Abuse of Authority – Frisk, § 87(2)(g)). PO Genao allegedly searched § 87(2)(b) (Allegation O: Abuse of Authority – Search (of person), § 87(2)(g)). PO Genao seized § 87(2)(b)'s property (Allegation P: Abuse of Authority – Property Seizure, § 87(2)(g)).

§ 87(2)(b) and § 87(2)(b) were arrested for § 87(2)(b) (BR 01 and BR 02) and were released with DATs. PO Genao and Det. Cruz prepared Stop Reports (BR 03 and BR 04) for § 87(2)(b). PO Curbelo prepared Property Clerk Invoices (BR 30 and BR 31) for the marijuana found at the location.

Video obtained from NYCHA did not capture the incident location (BR 05, BR 06, and BR 07). There was no other video of this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Raymond Curbelo stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Detective Christopher Cruz stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Jose Genao stopped § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Raymond Curbelo stopped § 87(2)(b)

Allegation (E) Abuse of Authority: Detective Christopher Cruz stopped § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Jose Genao stopped § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Raymond Curbelo stopped § 87(2)(b)

Allegation (H) Abuse of Authority: Detective Christopher Cruz stopped § 87(2)(b)

Allegation (I) Abuse of Authority: Police Officer Jose Genao stopped § 87(2)(b)

It is undisputed that on April 24, 2018, at approximately 11:25 p.m. PO Curbelo, Det. Cruz, and PO Genao stopped § 87(2)(b) and § 87(2)(b) inside of § 87(2)(b) in Manhattan. It is also undisputed that § 87(2)(b) told officers that he lived in the building. The circumstances surrounding the stop are disputed.

§ 87(2)(b) (BR 08) said that he was in the lobby of his apartment building, a NYCHA complex, waiting for a friend to meet him. § 87(2)(b) had been in the lobby for approximately two minutes and was charging his phone in an outlet underneath the mailboxes. § 87(2)(b) was not intoxicated, had not smoked marijuana, did not have any marijuana on his person, did not smell any marijuana in the lobby, and did not see anyone else handling marijuana. § 87(2)(b)

was wearing black jeans, a black t-shirt, and sneakers. He had a bi-fold wallet approximately three quarters of an inch thick and a small key ring with two keys on it in his pants pockets. There was nothing else in his pockets.

§ 87(2)(b)'s neighbors, § 87(2)(b) and § 87(2)(b) who live in the same building, were also in the lobby. § 87(2)(b) and § 87(2)(b) were not interacting with each other in any way, and § 87(2)(b) did not see anything that appeared to be a bulge or a weapon in § 87(2)(b)'s or § 87(2)(b)'s pockets.

PO Curbelo, Det. Cruz, and PO Genao entered the lobby from the back entrance and approached § 87(2)(b) and § 87(2)(b). Det. Cruz asked § 87(2)(b) what he was doing and for his identification, which § 87(2)(b) immediately provided. PO Genao asked § 87(2)(b) to turn around and face the wall in between § 87(2)(b) and § 87(2)(b). PO Curbelo and Det. Cruz were talking to § 87(2)(b) and § 87(2)(b) at the same time, but § 87(2)(b) was not paying attention to what they were saying because he was focused on speaking with PO Genao.

The investigation was unable to establish contact with § 87(2)(b) (BR 25) or § 87(2)(b) (BR 26) and, as such, did not obtain statements from them.

Det. Cruz (BR 09) said that he was at the NYCHA complex with PO Curbelo and PO Genao because there had been a homicide with a gun there approximately two hours earlier, and they were canvassing for possible witnesses. They did not have descriptions of possible suspects or witnesses and were not looking for any particular evidence; their intent was to walk around the complex to try to speak with anyone who may have seen the incident or had information about what had happened.

As Det. Cruz, PO Curbelo, and PO Genao were driving by § 87(2)(b), Det. Cruz saw § 87(2)(b) and § 87(2)(b) inside of the lobby from approximately 20 to 30 feet away. The lobby is well-lit from the interior and has glass walls, so Det. Cruz was able to see them clearly. Det. Cruz watched § 87(2)(b) and § 87(2)(b) for approximately three minutes, and it seemed to him that they were together because they were in close proximity to one another. Det. Cruz decided to approach § 87(2)(b) and § 87(2)(b) to ask if they knew anything about the homicide and because he suspected that they may have been loitering in a NYCHA building. He did not suspect them of being involved in any other sort of criminality.

Det. Cruz, PO Curbelo, and PO Genao entered the lobby from the back entrance because they did not want § 87(2)(b) or § 87(2)(b) to leave before they had a chance to inquire about why they were in the lobby of a NYCHA building. As soon as Det. Cruz entered the lobby, he saw § 87(2)(b) holding a cigarette-sized piece of brown paper in his right hand between his thumb and index finger. § 87(2)(b) was sprinkling a dried, green, vegetal substance that appeared and smelled like marijuana into this piece of paper. (Det. Cruz stated that he received training in how to identify and field test marijuana in the Police Academy. He has been involved in approximately 400 marijuana related arrests.)

When § 87(2)(b) saw Det. Cruz, PO Curbelo, and PO Genao, he grabbed the marijuana that he had sprinkled into the brown cigar paper along with the paper out of § 87(2)(b)'s hand. Det. Cruz did not see where § 87(2)(b) put the marijuana but noted that it was confiscated at the scene and later vouchered at the stationhouse.

As soon as Det. Cruz saw the marijuana, he considered § 87(2)(b) and § 87(2)(b) to be under arrest for criminal possession of marijuana. Det. Cruz was focused on § 87(2)(b) and § 87(2)(b) so he did not see what § 87(2)(b) was doing or if § 87(2)(b) was in possession

of any visible marijuana. Det. Cruz verbally identified himself as a police officer and asked § 87(2)(b) and § 87(2)(b) to identify themselves, whether they lived in the building, and to provide him with identification. § 87(2)(b) told Det. Cruz that he lived in the building and gave Det. Cruz his ID.

PO Curbelo's (BR 10) statement was generally consistent with that of Det. Cruz with the following exceptions noted. Upon entering the lobby, PO Curbelo saw § 87(2)(b) leaning with the left side of his body against a column in the middle of the room. § 87(2)(b) and § 87(2)(b) were approximately five feet away by the mailboxes against the wall. PO Curbelo was only able to see § 87(2)(b)'s right hand and forearm; the rest of his body was obscured by the column. § 87(2)(b) was holding a palm-sized piece of brown cigar paper in his hand as § 87(2)(b) sprinkled marijuana onto the paper. (PO Curbelo received training in identifying marijuana by appearance and smell while at the Police Academy. He also received field training with the Narcotics Unit. He has been involved in approximately 100 marijuana related arrests.)

PO Curbelo approached § 87(2)(b) while Det. Cruz and PO Genao approached § 87(2)(b) and § 87(2)(b). As he walked towards § 87(2)(b) saw what appeared to be a rolled, unlit cigar in § 87(2)(b)'s hand. Because he had just seen § 87(2)(b) sprinkling marijuana into a brown piece of paper in § 87(2)(b)'s hand, PO Curbelo thought the cigar in § 87(2)(b)'s hand contained marijuana. There was no other reason he suspected that this was not simply a cigar. (It was later determined not to contain marijuana).

PO Curbelo walked around the column so he could more clearly see both of § 87(2)(b)'s hands. PO Curbelo then saw a transparent ziplock bag smaller than the palm of a hand in § 87(2)(b)'s left hand. The bag contained a green vegetal substance that PO Curbelo suspected was marijuana. As soon as PO Curbelo saw § 87(2)(b) holding the transparent plastic bag with what he believed to be marijuana, he considered § 87(2)(b) to be under arrest for criminal possession of marijuana. PO Curbelo asked § 87(2)(b) for his ID and if he lived in the building but could not recall if § 87(2)(b) provided him with an ID. PO Curbelo did not see who, specifically, was interacting with § 87(2)(b) and § 87(2)(b) and did not hear any conversations that they may have had because he was focused on § 87(2)(b).

PO Genao's (BR 11) statement was generally consistent with those of his fellow officers with the following exceptions noted. In addition to approaching § 87(2)(b) and § 87(2)(b) because he suspected them of loitering and because he, Det. Cruz, and PO Curbelo wanted to ask them about the earlier homicide, PO Genao had previous experience with people congregating in the lobby of § 87(2)(b) to smoke marijuana and thought that they may have been doing this. PO Genao had no specific reason why he thought that § 87(2)(b) and § 87(2)(b) were smoking marijuana. Det. Cruz entered the lobby first, followed by PO Curbelo and then PO Genao. When PO Genao entered the lobby, § 87(2)(b) and § 87(2)(b) were all standing against the wall by the mailboxes. PO Genao did not see § 87(2)(b) or § 87(2)(b) in possession of any marijuana and did not smell burnt or unburnt marijuana in the lobby. PO Genao did not know why § 87(2)(b) and § 87(2)(b) had been stopped by Det. Cruz and PO Curbelo but suspected it was because they had been loitering in a NYCHA complex. PO Genao asked § 87(2)(b) if he lived in the building, and he replied that he did.

NYCHA House Rules (BR 27) state that NYCHA premises are for the exclusive use of residents, invited guests, and persons with legitimate business. All persons are expected to cooperate with inquiries from the police regarding their presence or conduct in any building or on

development grounds. Unlawful activity, lingering, smoking, the consumption of alcohol, and the possession of an open container of alcohol are prohibited in the lobby, corridors, and stairwell.

Patrol Guide Procedure 212-60 (BR 28) states that when officers suspect that an unauthorized person is within NYCHA property, they should approach the individual and ask if they live in the building, if they are visiting someone who lives in the building, or if they have business in the building. If a person refuses to explain or is unable to explain their presence in the building, the officer may instruct the person that they must leave the building or be subject to arrest for trespass.

According to New York Penal Law 221.10 (BR 32), a person is guilty of criminal possession of marijuana in the fifth degree when he knowingly and unlawfully possesses marijuana in a public space, and such marijuana is burning or open to public view.

Det. Cruz, PO Curbelo, and PO Genao all consistently stated that they thought that § 87(2)(b) and § 87(2)(b) were together in the lobby and that § 87(2)(b) told them that he lived in the building. Det. Cruz added that § 87(2)(b) gave him his identification indicating that he lived in the building, and PO Curbelo stated that § 87(2)(b) and § 87(2)(b) both said that they lived in the building. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Although Det. Cruz and PO Curbelo both stated that the specific reason that they stopped § 87(2)(b) and § 87(2)(b) was because they saw § 87(2)(b) sprinkling marijuana into a piece of paper in § 87(2)(b)'s hand and because § 87(2)(b) had a visible bag of marijuana in his pocket, PO Genao did not see this, and § 87(2)(b) denied this.

§ 87(2)(g)

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Allegation (J) Abuse of Authority: Detective Christopher Cruz frisked § 87(2)(b)

Allegation (K) Abuse of Authority: Detective Christopher Cruz searched § 87(2)(b)

Allegation (L) Abuse of Authority: Police Officer Raymond Curbelo frisked § 87(2)(b)

Allegation (M) Abuse of Authority: Police Officer Raymond Curbelo searched § 87(2)(b)

§ 87(2)(b) (BR 08) stated that he saw Det. Cruz and PO Curbelo pat down § 87(2)(b) and § 87(2)(b) put their hands into § 87(2)(b)'s and § 87(2)(b)'s pockets, remove items, and then put them back into § 87(2)(b)'s and § 87(2)(b)'s pockets. § 87(2)(b) was focused on PO Genao, so he did not know who was interacting with whom and did not specifically see which items were removed.

As noted above, § 87(2)(b) (BR 25) and § 87(2)(b) (BR 26) did not provide the investigation with statements.

PO Curbelo (BR 10) stated that as soon as he saw the ziplock bag containing what he thought to be marijuana in § 87(2)(b)'s pocket, he placed § 87(2)(b) who did not offer any resistance, into handcuffs. PO Curbelo patted down the exterior of § 87(2)(b)'s clothing from head to toe for weapons and looked inside of § 87(2)(b)'s pants and jacket pockets for weapons and any more marijuana. At the time that PO Curbelo went into § 87(2)(b)'s pockets, he considered § 87(2)(b) to be under arrest. PO Curbelo did not see any officers frisk or search § 87(2)(b) because he was focused on § 87(2)(b).

Det. Cruz (BR 09) stated that he could not recall if he patted down § 87(2)(b) or § 87(2)(b) nor could he recall seeing any other officer do this.

PO Genao (BR 11) stated that he was focused on § 87(2)(b) so he did not see if any officers frisked or searched § 87(2)(b) or § 87(2)(b).

Arrest reports for § 87(2)(b) (BR 01) and § 87(2)(b) (BR 02) note that they were arrested for criminal possession of marijuana in the fifth degree.

Property Clerk Invoice number § 87(2)(b) prepared for § 87(2)(b) (BR 29) indicates that he was found with loose marijuana contained in a brown piece of cigar paper. Property Clerk Invoice number § 87(2)(b) prepared for § 87(2)(b) (BR 30) indicates that he was found with two small ziplock bags containing marijuana.

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Allegation (N) Abuse of Authority: Police Officer Jose Genao frisked § 87(2)(b)

It is undisputed that PO Genao frisked § 87(2)(b) § 87(2)(g)

§ 87(2)(b) (BR 08) stated that after he gave his ID to Det. Cruz, PO Genao asked him to turn around and face the wall and if he had anything sharp in his pockets. § 87(2)(b) stated that he did not have anything sharp in his pockets. PO Genao then patted down the exterior of § 87(2)(b)'s waist and pants.

PO Genao (BR 11) stated that, without knowing why § 87(2)(b) had been stopped, he approached § 87(2)(b) who was standing against the wall between § 87(2)(b) and § 87(2)(b). PO Genao thought that they may have been stopped for loitering, but he had not asked for any identifications and did not know where § 87(2)(b) or § 87(2)(b) lived. Det. Cruz and PO Curbel did not tell him at this time why they had stopped § 87(2)(b) and § 87(2)(b).

PO Genao approached § 87(2)(b) because PO Curbelo and Det. Cruz were speaking directly to § 87(2)(b) and § 87(2)(b) and no one was speaking with § 87(2)(b). PO Genao asked § 87(2)(b) if he lived in the building and what he was doing, and § 87(2)(b) replied that he did live in the building and that he was "just chilling." As PO Genao was speaking with § 87(2)(b) he saw a square-shaped object in § 87(2)(b)'s front left pants pocket that was sticking away from his body but not hanging down from the pocket. PO Genao could not be sure

of the size or more specific shape of the object but suspected that it may have been a weapon. PO Genao did not know what kind of weapon it may have been. Because PO Genao did not know the specific reason that Det. Cruz and PO Curbelo had stopped § 87(2)(b) and § 87(2)(b) because there had been a homicide in the area two hours prior, and because PO Genao saw something in § 87(2)(b)'s pocket that he thought could have been a weapon, PO Genao decided to frisk § 87(2)(b) by patting down his waist area, left pants pocket, and legs.

PO Genao reviewed the Stop Report #§ 87(2)(b) (BR 03) that he prepared for § 87(2)(b) and stated that it was consistent with his statement.

Det. Cruz (BR 09) stated that he did not see PO Genao frisk § 87(2)(b) because he was focused on § 87(2)(b) and § 87(2)(b). PO Cruz reviewed the Stop Report #§ 87(2)(b) (BR 04) that he prepared for § 87(2)(b) and clarified that he noted that § 87(2)(b) was not frisked because he had not specifically seen any officers frisk § 87(2)(b). § 87(2)(b) had not done so himself, and had not been told by any other officers that they had done so. He confirmed that the information in the Stop Report was consistent with his statements.

PO Curbelo (BR 10) said that he did not see PO Genao frisk § 87(2)(b) because they were focused on § 87(2)(b) and § 87(2)(b).

According to the EVENT #s § 87(2)(b) (BR 12), the first 911 call regarding the homicide about which Det. Cruz, PO Curbelo, and PO Genao were canvassing occurred at approximately 8:38 p.m. at § 87(2)(b) in Manhattan. A description of two individuals as black males, one wearing a white shirt and black pants and the other wearing a black jacket and black pants, was transmitted at approximately 8:39 p.m. At that time, the two individuals were seen running towards § 87(2)(b) in Manhattan, which is part of the Carver Housing project.

Complaint Report § 87(2)(b) (BR 13) states that the homicide occurred at 8:34 p.m. in front of § 87(2)(b). It notes that the individual wanted in connection with the homicide was male, on foot, wearing a gray sweatshirt or jogging jacket and black jeans. No other physical descriptions are included.

A frisk may be conducted when an officer reasonably suspects that a person armed with an instrument or substance readily capable of causing serious physical injury. People v. De Bour, 40 N.Y.2d 210, 1976, (BR 14).

Spatial and temporal proximity to the incident in addition to a matching physical description is necessary for an officer to have reasonable suspicion to frisk an individual. People v. Ward, 161 A.D.3d 520, 2018 (BR 15).

In People v. Ventura, 139 A.D.2d 196, 1988 (BR 16), the court determined that the frisk of an individual was unlawful when, during a stop, an officer observed a shapeless object in an individual's jacket.

PO Genao stated that when he first approached § 87(2)(b) he did not know why Det. Cruz and PO Curbelo had stopped § 87(2)(b) and § 87(2)(b). PO Genao did not smell marijuana and did not become aware that the stop had been precipitated by Det. Cruz's and PO Curbelo's observation of marijuana in public view until after he frisked § 87(2)(b) and, therefore, did not know that § 87(2)(b) and § 87(2)(b) were considered to be under arrest at that time. § 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

Allegation (O) Abuse of Authority: Police Officer Jose Genao searched § 87(2)(b)

§ 87(2)(b) (BR 08) stated that after PO Genao patted him down, he put his hands into his front and back pants pockets.

As previously noted, § 87(2)(b) (BR 25) and § 87(2)(b) (BR 26) did not provide the investigation with statements.

PO Genao (BR 11) stated that after he frisked § 87(2)(b) he determined that § 87(2)(b) did not have any weapons on his person. PO Genao could not recall if he ever put his hands into § 87(2)(b)'s front and back pants pockets.

PO Curbelo (BR 10) and Det. Cruz (BR 12) both denied seeing PO Genao search § 87(2)(b).

Stop Report # § 87(2)(g) (BR 03) and Stop Report # § 87(2)(b) (BR 04) both note that § 87(2)(b) was not searched.

§ 87(2)(g)

Allegation (P) Abuse of Authority: Police Officer Jose Genao seized § 87(2)(b) **s property.**

It is undisputed that PO Genao took two cell phones from the lobby of § 87(2)(b) in Manhattan. § 87(2)(g)

§ 87(2)(b) (BR 08) stated that he saw PO Genao walk to the wall and unplug his iPhone. § 87(2)(b) saw that PO Genao had two phones in his hand, but he did not know to whom the other phone belonged. § 87(2)(b) told PO Genao that the phone was his and that he wanted it back because he was going upstairs. PO Genao told § 87(2)(b) that § 87(2)(b) had not previously been in possession of the phone, so he needed to take it back to the stationhouse. § 87(2)(b)'s mother, § 87(2)(b) came downstairs and identified one of the phones as belonging to § 87(2)(b). § 87(2)(b) also told PO Genao that the background on the phone was of his son, but PO Genao still refused to give § 87(2)(b) the phone and told him that he would need to retrieve it from the stationhouse.

§ 87(2)(b) went to the stationhouse immediately following the officers. After approximately one hour, his phone was returned to him.

As noted above, § 87(2)(b) (BR 25) and § 87(2)(b) (BR 26) did not provide the investigation with statements. § 87(2)(b) was not available to provide a statement.

PO Genao (BR 11) stated that after he led § 87(2)(b) to the wall, he spoke with Det. Cruz as Det. Cruz checked § 87(2)(b)'s ID for warrants. At this time, Det. Cruz told PO Genao the reason why he and PO Curbelo had stopped § 87(2)(b) and § 87(2)(b). Det. Cruz determined that § 87(2)(b) did not have any open warrants, so he decided to release him. Det. Cruz told PO Genao that they would be taking § 87(2)(b) and § 87(2)(b) to the stationhouse to process their arrests.

PO Genao moved over to where § 87(2)(b) was standing and saw two white iPhones stacked on top of each other on the ledge underneath the mailbox with a white wire plugged into the wall. PO Genao picked up the two phones and the white cord, held them up to § 87(2)(b) and asked him, “Is this your property?” § 87(2)(b) said, “Yes.”

As PO Genao was leaving the lobby, § 87(2)(b) who had been standing behind them by the elevators, said, “That’s my phone.” PO Genao held up the two phones and asked him if he was referring to them. § 87(2)(b) reiterated that it was his phone. PO Genao told § 87(2)(b) that § 87(2)(b) had said that both of the phones belonged to him. § 87(2)(b) who was standing right next to PO Genao, did not say anything to refute this or to confirm that one of the phones belonged to § 87(2)(b). Because of this, PO Genao was not sure who owned the phones, so he decided to take both phones to the stationhouse to determine their ownership. PO Genao then left the location with PO Curbelo, Det. Cruz, § 87(2)(b) and § 87(2)(b). PO Genao denied seeing or speaking with § 87(2)(b).

A few minutes later, at the 23 Precinct stationhouse, PO Genao saw Sgt. Michael Pomerantz of Manhattan Gang North speaking with § 87(2)(b). Sgt. Pomerantz approached PO Genao and asked for § 87(2)(b)’s phone. PO Genao explained again that he did not know which phone belonged to § 87(2)(b) because § 87(2)(b) had claimed that both were his. Sgt. Pomerantz took both phones and, ultimately, returned one of them to § 87(2)(b).

Det. Cruz’s (BR 09) statement was generally consistent with that of PO Genao with the following exceptions noted. As Det. Cruz, PO Curbelo, and PO Genao were walking out of the lobby with § 87(2)(b) and § 87(2)(b) he heard § 87(2)(b) say, “That’s my phone.” Prior to this, Det. Cruz had not seen any phones in the area and had not heard any discussions about any phones.

Det. Cruz turned around and asked PO Genao, who was closest to § 87(2)(b) what was going on, and PO Genao explained that § 87(2)(b) was claiming a phone § 87(2)(b) had already said belonged to him. Either Det. Cruz or another officer, he was not sure who, explained to § 87(2)(b) that because they could not determine who owned the phone, they needed to take it back to the stationhouse.

PO Curbelo’s (BR 10) statement was consistent with those of his fellow officers with the following exceptions noted. PO Curbelo did not see any cell phones at the location and did not hear anyone talking about a cell phone. He had no knowledge of a cell phone being brought back to the stationhouse.

Stop Report # § 87(2)(b) (BR 03) and Stop Report # § 87(2)(b) (BR 04) both note that § 87(2)(b) said, “That’s my phone.” Property vouchers were not prepared for either phone due to the short time they were in police custody.

Patrol Guide Procedure 218-19 (BR 31) states that property should be taken into custody when the true owner cannot be determined and immediate arrest is not warranted.

It is undisputed that § 87(2)(b)’s phone was plugged into the wall when PO Genao picked it up and that at no point during the incident had it been in § 87(2)(b)’s physical possession. It is also undisputed that when § 87(2)(b) asked PO Genao for his phone, PO Genao was holding two similar phones, and that at least one belonged to § 87(2)(b) with whom § 87(2)(b) denied interacting. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
[REDACTED] § 87(2)(g)
[REDACTED]
 - § 87(2)(b) [REDACTED]
[REDACTED]
- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (**BR 18**).
- § 87(2)(b) [REDACTED]
[REDACTED] § 87(2)(g) [REDACTED]
[REDACTED]
 - § 87(2)(b) [REDACTED]
[REDACTED]
- PO Curbelo has been a member of service for 10 years and has been a subject in three CCRB complaints with a total of seven allegations, none of which was substantiated. § 87(2)(g) [REDACTED]
[REDACTED]
- Det. Cruz has been a member of service for 15 years and has been a subject in two CCRB complaints with a total of four allegations, none of which was substantiated. § 87(2)(g) [REDACTED]
[REDACTED]
- PO Genao has been a member of service for nine years and has been a subject in three CCRB complaints with a total of six allegations, two of which were substantiated.
 - CCRB case # 201607268 involved substantiated allegations of a stop and a frisk against PO Genao. The Board recommended Command Discipline A, and the NYPD imposed Command Discipline A.

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- As of June 20, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**BR 20**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]
[REDACTED]

Squad No.: 12

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date